

MONTGOMERY COUNTY ETHICS COMMISSION

ADVISORY OPINION No. 03-010

Agenda Item No. 03-011

The Police Department's Legal and Labor Relations Division has asked the Ethics Commission to reconsider its December 20, 2002, advisory opinion regarding a police officer's acceptance of an honorarium to speak about his or her role in the October 2002 sniper shootings. We will take this opportunity to reaffirm that a public employee violates the prohibition against the use of prestige of office for private gain by accepting remuneration for any service (although it usually involves speaking, teaching, or writing) directly and immediately related to that employee's governmental activities.

The Division notes that §19A-14(a) prohibits only an "intentional" misuse of the prestige of one's office. Relying on Black's Law Dictionary, it argues that an employee does not misuse prestige of office unless that employee intends to misuse the prestige of his or her office. The Division is wrong because §19A-14(a) merely requires an intent to commit an act, not scienter or an intent to violate the law. In this situation, the officer intends to give the speech, for pay, about his or her official duties, which brings the activity within the prohibition of 19A-14(a).

Finally, the Division also argues that the Commission's opinion did not address § 19A-16(d)(8), which allows an employee, under certain circumstances, to accept an honorarium that might otherwise be a prohibited gift under § 19A- 16(c). While the Commission's opinion does not address this section of the ethics law, the County Attorney's opinion, upon which our opinion was based, does. The County Attorney's opinion was attached to, and published along with, our opinion for that reason. In sum, while receipt of honoraria under certain circumstances may not violate the ethics law's prohibition upon the acceptance of gifts, it can still violate the prestige of office prohibition when an employee accepts it for services directly and immediately related to that employee's governmental activities.

FOR THE COMMISSION:

[signed]

Elizabeth K. Kellar, Chair

March 19, 2003